

adequate means of enforcement;

(C) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(D) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

(ii) The procedures set forth in paragraph (e)(3) of this section are subject to Commission policies on resale of international private lines in CC Docket No. 90-337 as amended in IB Docket No. 95-22.

(4) Any carrier authorized under this section to acquire and operate international private line facilities other than through resale may use those private lines to provide switched basic services to countries found by the Commission to provide equivalent resale opportunities except in circumstances where the applicant is affiliated with a facilities-based foreign carrier in the country at the foreign end of the private line, and the Commission has not determined that the foreign carrier does not possess market power in that market. In such circumstances, the applicant shall not commence service on such route unless and until it receives specific authority to do so under paragraph (e)(6) of this section. The Commission will provide public notice of its equivalency findings. The applicant is subject to all applicable Commission rules and regulations and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See § 63.12.

(i) Except as provided in paragraph (e)(4)(ii) of this section, any carrier that seeks to provide switched basic services over its authorized private line facilities to countries not identified in the Commission's published list of equivalent countries shall, for each country for which it seeks to provide switched basic service over its authorized private lines facilities, request such authority by formal application. Such application shall be accompanied by a demonstration that that country affords resale opportunities equivalent to those available under U.S. law. In this regard, applicant shall include the information required by paragraph (3) of this section.

(ii) No formal application is required under paragraph (e)(4) of this section in circumstances where the carrier's previously authorized private line facility is interconnected to the public switched network only on one end -- either the U.S. or the foreign end -- and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(5) If applying for authority to acquire facilities through the transfer of control of a common carrier holding international Section 214 authorization, or through the assignment of another carrier's existing authorization, the applicant shall complete paragraph (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Paragraph (g) of this section is not applicable, and only the transferee/assignee needs to complete paragraph (i) and (j) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(6) If applying for authority to acquire facilities or to provide services not covered by Sections 63.18(e)(1) through (5), the applicant shall provide a description of the facilities

and services for which it seeks authorization. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization. Applicants for new submarine cable facilities also shall include a list of the proposed owners of the cable, their voting interests and ownership interests by segment in the cable.

(f) Applicants may apply for any or all of the authority provided for in paragraph (e) of this section in the same application. The applicant may want to file separate applications for those services not subject to streamlined processing under Section 63.12.

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(6) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by Section 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in Section 1.1311 of this chapter need not be filed with the application.

(h) A certification as to whether or not the applicant is, or has an affiliation with, a foreign carrier.

(1) The certification shall state with specificity each foreign country in which the applicant is, or has an affiliation with, a foreign carrier. For purposes of this certification:

(i) Affiliation is defined to include:

(A) A greater than 25 percent ownership of capital stock, or controlling interest at any level, by the applicant, or by any entity that directly or indirectly controls or is controlled by it, or that is under direct or indirect common control with it, in a foreign carrier or in any entity that directly or indirectly controls a foreign carrier; or

(B) A greater than 25 percent ownership of capital stock, or controlling interest at any level, in the applicant by a foreign carrier, or by any entity that directly or indirectly controls or is controlled by a foreign carrier, or that is under direct or indirect common control with a foreign carrier; or by two or more foreign carriers investing in the applicant in the same manner in circumstances where the foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of basic international telecommunications services in the United States. A U.S. carrier also will be considered to be affiliated with a foreign carrier where the foreign carrier controls, is controlled by, or is under common control with a second foreign carrier already found to be affiliated with that U.S. carrier under this section.

(ii) Foreign carrier is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(2) In support of the required certification, each applicant shall also provide the name, address, citizenship and principal businesses of its ten percent or greater direct and indirect shareholders or other equity holders and identify any interlocking directorates.

(3) Each applicant that proposes to acquire facilities through the resale of the international switched or private line services of another U.S. carrier shall additionally

certify as to whether or not the applicant has an affiliation with the U.S. carrier(s) whose facilities-based service(s) the applicant proposes to resell (either directly or indirectly through the resale of another reseller's service). For purposes of this paragraph, affiliation is defined as in paragraph (h)(1)(i) of this section, except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."

(4) Each applicant that certifies under this section that it has an affiliation with a foreign carrier and that proposes to resell the international private line services of another U.S. carrier shall additionally certify as to whether the affiliated foreign carrier owns or controls telecommunications facilities in the particular country(ies) to which the applicant proposes to provide service (*i.e.*, the destination country(ies)). For purposes of this paragraph, telecommunications facilities are defined as the underlying telecommunications transport means, including intercity and local access facilities, used by a foreign carrier to provide international telecommunications services offered to the public.

(5) Each applicant and carrier authorized to provide international communications service under this part is responsible for the continuing accuracy of the certifications required by paragraphs (h)(3) and (4) of this section. Whenever the substance of any such certification is no longer accurate, the applicant/carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided. This information may be used by the Commission to determine whether a change in regulatory status may be warranted under Section 63.10.

(6) Each applicant that certifies that it is, or that it has an affiliation with, a foreign carrier, as defined in paragraphs (h)(1)(i)(B) and (ii), respectively, in a named foreign country and that seeks to operate as a U.S. facilities-based international carrier to that country from the United States shall provide information in its application filed under this part to demonstrate that either:

(i) The named foreign country (*i.e.*, the destination foreign country) provides effective competitive opportunities to U.S. carriers to compete in that country's international facilities-based market; or

(ii) Its affiliated foreign carrier does not have the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in the destination country.

(A) The demonstration specified by paragraph (6)(i) of this subsection should address the following factors:

(1) The legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(2) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services;

(3) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(i) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(ii) Timely and nondiscriminatory disclosure of technical information needed to

use, or interconnect with, carriers' facilities; and

(iii) Protection of carrier and customer proprietary information;

(4) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(5) Any other factors the applicant deems relevant to its demonstration.

(B) The demonstration specified in paragraph (h)(6)(ii) of this section should include the same information requested by paragraph(h)(8) of this section.

(7) Each applicant that certifies that it is, or that it has an affiliation with, a foreign carrier, as defined in paragraph (h)(1)(i)(B) and (ii), respectively, in a named foreign country and that proposes to resell the international switched or non-interconnected private line services, respectively, of another U.S. carrier for the purpose of providing international communications services to the named foreign country from the United States shall provide information in its application filed under this part to demonstrate that either:

(i) The named foreign country (i.e., the destination foreign country) provides effective competitive opportunities to U.S. carriers to resell international switched or non-interconnected private line services, respectively; or

(ii) Its affiliated foreign carrier does not have the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in the destination country.

(A) The demonstration specified by paragraph (h)(7)(i) of this section should address the following factors:

(1) The legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(2) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for the provision of the relevant resale service;

(3) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(i) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(ii) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(iii) Protection of carrier and customer proprietary information;

(4) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(5) Any other factors the applicant deems relevant to its demonstration.

(B) The demonstration specified in paragraph (h)(7)(ii) of this section should include the same information requested by paragraph (h)(8) of this subsection.

(8) Each applicant that certifies that it has an affiliation with a foreign carrier in a named foreign country and that desires to be regulated as non-dominant for the provision of international communications service to that country may provide information in its application filed under this part to demonstrate that its affiliated foreign carrier does not have the ability to discriminate against unaffiliated U.S. international carriers through control of

bottleneck services or facilities in the named foreign country. See § 63.10, Regulatory Classification of U.S. International Carriers.

(i) Such a demonstration should address the factors that relate to the scope or degree of the foreign affiliate's bottleneck control, such as:

(A) The monopoly, duopoly, or oligopoly status of the destination country; and

(B) Whether the foreign affiliate has the potential to discriminate against unaffiliated U.S. international carriers through such means as preferential operating agreements, preferential routing of traffic, exclusive or more favorable transiting agreements, or preferential domestic access and interconnection arrangements.

(ii) Such a demonstration may also address other factors the applicant deems relevant, such as the effectiveness of regulation in the destination country.

(i) Each applicant shall certify that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the U.S. and any foreign country which the applicant may serve under the authority granted under this part and will not enter into such agreements in the future.

(1) For purposes of paragraph (i) of this section, and of Sections 63.11(c)(2)(iii), 63.13(a)(4), and 63.14, special concession is defined as any arrangement that affects traffic or revenue flows to or from the United States that is offered exclusively by a foreign carrier or administration to a particular U.S. international carrier and not also to similarly situated U.S. international carriers authorized to serve a particular route.

(2) The special concessions certification required by paragraph (i) of this section and by Sections 63.11(c)(2)(iii) and 63.13(a)(4) shall be viewed as an ongoing representation to the Commission, and applicants/carriers shall immediately inform the Commission if at any time the representations in their certifications are no longer true. Failure to so inform the Commission will be deemed a material misrepresentation to the Commission.

(j) A certification pursuant to Sections 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. § 853a.

Note 1: The word "control" as used in this section is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

Note 2: The term "facilities-based carrier" as used in this section means one that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in an international facility, regardless of whether the underlying facility is a common or non-common carrier submarine cable, or an INTELSAT or separate satellite system.

Note 3: The assessment of "capital stock" ownership will be made under the standards developed in Commission case law for determining such ownership. See, e.g., Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995). "Capital stock" includes all forms of equity ownership, including partnership interests.

Note 4: In applying the provisions of this section, ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and

application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30×0.26). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

12. A new Section 63.19 is added to read as follows:

§ 63.19 Special procedures for discontinuances of international services.

(a) Any non-dominant international carrier as this term is defined in Section 63.10 that seeks to discontinue, reduce or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in Sections 63.61 through 63.601:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 60 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice.

(2) The carrier shall file with this Commission a copy of the notification on or after the date on which notice has been given to all affected customers.

(b) Any dominant international carrier as this term is defined in Section 63.10 that seeks to retire international facilities, dismantle or remove international trunk lines, and the services being provided through these facilities are not being discontinued, reduced or impaired, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs service to a community or retires facilities that impair or reduce service to a community, the dominant carrier shall file an application pursuant to Sections 63.62 and 63.500.

13. A new Section 63.20 is added to read as follows:

§ 63.20 Copies required; fees; and filing periods for international service providers.

(a) Unless otherwise specified the Commission shall be furnished with an original and five copies of applications filed for international facilities and services under Section 214 of the Communications Act of 1934, as amended. Provided, however, that where applications involve only the supplementation of existing international facilities, and the issuance of a certificate is not required, an original and two copies of the application shall be furnished. Upon request by the Commission, additional copies of the application shall be furnished. Each application shall be accompanied by the fee prescribed in Subpart G of Part 1 of this chapter.

(b) No application accepted for filing and subject to the provisions of Sections 63.02, 63.18, 63.62 or 63.505 shall be granted by the Commission earlier than 28 days

following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period, or the application qualifies for streamlined processing pursuant to Section 63.12.

(c) No application accepted for filing and subject to the streamlined processing provisions of Section 63.12 shall be granted by the Commission earlier than 21 days following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period.

(d) Any interested party may file a petition to deny an application within the 21 day or other time period specified in paragraphs (b) or (c) of this section. The petitioner shall serve a copy of such petition on the applicant no later than the date of filing thereof with the Commission. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with the public interest, convenience and necessity. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant may file an opposition to any petition to deny within 14 days after the original pleading is filed. The petitioner may file a reply to such opposition within seven days after the time for filing oppositions has expired. Allegations of facts or denials thereof shall similarly be supported by affidavit. These responsive pleadings shall be served on the applicant or petitioner, as appropriate, and other parties to the proceeding.

14. A new Section 63.21 is added to read as follows:

§ 63.21 Conditions applicable to international Section 214 authorizations.

International carriers authorized under Section 214 of the Communications Act of 1934, as amended, must follow the following requirements and prohibitions:

(a) Carriers may not resell private lines for the provision of international switched services unless the country at the foreign end of the private line is deemed equivalent. See § 63.18(e)(3) through (4).

(b) Carriers must file copies of operating agreements entered into with their foreign correspondents within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of this chapter.

(c) Carriers must file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, and Part 61 of this chapter.

(d) Carriers must file annual reports of overseas telecommunications traffic as required by Section 43.61 of this chapter.

(e) Carriers regulated as dominant must provide the Commission with the following information within 30 days after conveyance of transmission capacity on submarine cables to other U.S. carriers:

- (1) The name of the party to whom the capacity was conveyed;
- (2) The name of the facility in which capacity was conveyed;
- (3) The amount of capacity that was conveyed; and
- (4) The price of the capacity conveyed.

15. Section 63.52 is amended by revising the section heading to read as follows:

§ 63.52 Copies required; fees; and filing periods for domestic authorizations.

16. Section 63.53 is amended to read as follows:

§ 63.53 Form.

(a) Applications under Section 214 of the Communications Act shall be submitted on paper not more than 21.6 cm (8.5 in) wide and not more than 35.6 cm (14 in) long with a left-hand margin of 4 cm (1.5 in). This requirement shall not apply to original documents, or admissible copies thereof, offered as exhibits or to specially prepared exhibits. The impression shall be on one side of the paper only and shall be double-spaced, except that long quotations shall be single-spaced and indented. All papers, except charts and maps, shall be typewritten or prepared by mechanical processing methods, other than letter press, or printed. The foregoing shall not apply to official publications. All copies must be clearly legible.

(b) Applications submitted under Section 214 of the Communications Act for international services may be submitted on computer diskettes pursuant to a filing manual compiled by the International Bureau, but a paper copy of the application with the original signature must accompany the diskette. The manual will specify the type and format of the computer diskettes and the reporting and procedural requirements for such applications.

(c) Applications submitted under Section 214 of the Communications Act for international services and any related pleadings that are in a foreign language shall be accompanied by a certified translation in English.

17. Section 63.62 is amended by revising paragraph (a) to read as follows:

§ 63.62 Type of discontinuance, reduction, or impairment of telephone or telegraph service requiring formal application.

(a) The dismantling or removal of a trunk line (for contents of application see § 63.500) for all domestic carriers and for dominant international carriers except as modified in Section 63.19;

18. Section 63.71 is amended by revising the section heading to read as follows:

§ 63.71 Special procedures for discontinuance, reduction or impairment of service by domestic non-dominant carriers.

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS

Pursuant to Section 603 of Title 5, United States Code, 5 U.S.C. § 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rule Making in IB Docket No. 95-118. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. NEED AND PURPOSE OF RULES.

This *Report and Order* streamlines the international Section 214 authorization process and tariff requirements in order to greatly lessen the regulatory burdens on applicants, authorized carriers, and the Commission to enable them to operate more efficiently and respond better to customers' needs in a timely manner. These rules allow international carriers to enter and exit the market more quickly with greater flexibility to meet the evolving needs of the global telecommunications market.

B. ISSUES RAISED BY THE PUBLIC IN RESPONSE TO THE INITIAL ANALYSIS.

We received one comment in response to the Initial Regulatory Flexibility Analysis. The America's Carriers Telecommunications Association (ACTA) completely supported the initiatives of the Commission in seeking to reduce unnecessary regulation and to streamline the regulation required to serve the interests of the public. ACTA raised one area of concern as the Commission replaces traditional regulatory controls in favor of competition to regulate the marketplace. ACTA states that effective enforcement of the remaining regulations, which is both prompt and effective, is critical to survival of the smaller competitors in the industry. ACTA states that present complaint and tariff processes favor the established carriers, as does commercial arbitration and/or the Alternative Dispute Resolution proceedings of the Commission. ACTA states that the Commission should provide small competitors a fair, unbiased and competent forum to air their grievances and to obtain justice.

C. SIGNIFICANT ALTERNATIVES CONSIDERED.

We have attempted to balance all the commenters' concerns with our public interest mandate under the Act in order to adopt a clear and administratively feasible approach to processing international Section 214 applications and tariffs. Where we have removed regulations, we have been careful to consider the implications on small businesses and the industry in general. We have considered and addressed all of the alternatives offered. We rejected proposals to streamline dominant carrier regulations where we believed such action would hinder our ability to regulate dominant carriers, and safeguard against market power abuses.